No. _____

IN THE

Supreme Court of the United States

HELEN KETZNER, M.D.,

Petitioner,

—v.—

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY and PROVIDENT LIFE INSURANCE COMPANY,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Does a party have the right to a jury trial to decide issues of fact pursuant to the Seventh Amendment?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PAGE

OPINIONS BELOW

The decision of the United States Court of Appeals for the Third Circuit is published at 118 Fed. Appx. 595 (3d Cir. 2004). A copy of that decision is included as Appendix A.[1] The Third Circuit denied rehearing and rehearing en banc on May 11, 2005. A copy of that order is included as Appendix B.

STATEMENT OF JURISDICTION

This Court has jurisdiction to review the decision of the United States Court of Appeals for the Third Circuit pursuant to 28 U.S.C. § 1254.

DECLARATION OF INDEPENDENCE AND CONSTITUTION

A. The Declaration of Independence stated as one of the principal complaints against the King of England that he had "deprive[ed] us, in many cases, of the benefits of Trial by Jury." The Declaration of Independence para. 20 (U.S. 1776).

B. The Seventh Amendment states, in pertinent part, that "[i]n Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved[.]" U.S. Const., amend. VII.

STATEMENT OF THE CASE

Petitioner, Dr. Helen Ketzner, purchased a disability insurance policy from Respondent, John Hancock Mutual Life Insurance Company ("John Hancock"), in June 1980. 118 Fed. Appx. at 596 n.1. In November

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[1] Citation to the appendices will be styled, "A____".

1997, under the terms of Dr. Ketzner's disability insurance policies, she became unable to perform the duties of her occupation and was entitled to the full monthly benefit. *Id.* at 596. She was not and has not been paid those benefits in full.

On October 14, 1999, Dr. Ketzner sued Respondents to recover the benefits they owed her. *Id.* at 598. The District Court granted summary judgment against Dr. Ketzner on her breach of contract and bad faith claims before she could complete the requisite discovery. *Id.* at 602. The discovery that was allowed demonstrated genuine issues of material fact. *Id.* Those disputed issues of fact were never resolved by a jury.

Dr. Ketzner attempted to amend her complaint to include causes of action for, among other things, violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"). *Id.* at 601. The Magistrate Judge denied Dr. Ketzner's motion to amend based on his *erroneous* reliance on prior decisions he had authored involving the Employee Retirement Income Security Act ("ERISA"). *Id.* Those decisions dealt with ERISA preemption, which was *not* at issue because Dr. Ketzner purchased an insurance policy that was not governed by ERISA.[2] The Magistrate Judge's erroneous decision was affirmed by the District Court and then by the Third Circuit. *Id.*

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[2] As Judge Becker, then Chief Judge of the United States Court of Appeals for the Third Circuit, put it "ERISA has evolved into a shield that insulates HMOs from liability for even the most egregious acts of dereliction," which runs against "the intent of Congress" and "creates a monetary incentive for HMOs to mistreat those beneficiaries." *DiFelice v. Aetna U.S. Healthcare*, 346 F.3d 442, 453-54 (3d Cir. 2003) (Becker, C.J., concurring). Further, the unavailability of extra-contractual remedies), makes it impractical for lawyers to take an ERISA case on a contingency-fee basis, thus making it difficult for most claimants to pursue their rights. *Id.* at 459 (Becker, C.J., concurring).

The United States Court of Appeals for the Third Circuit upheld the lower courts' rulings in their entirety. *Id.* at 602.

By order dated May 11, 2005, the Third Circuit denied Dr. Ketzner's Petition for Rehearing and Rehearing en banc. (B2, 17a)

The following list sets forth some of the factual errors of the lower courts:

- The District Court erred in calculating the amount of benefits owed to Dr. Ketzner. The math was just plain wrong.
- The District Court and the Third Circuit erred in interpreting the medical abbreviation "r/o," which stands for rule out. They assumed "rule out" meant eliminated. In fact, the medical term of art "rule out" means the opposite—look for another possibility. The courts controverted the diagnostic conclusions of Dr. Ketzner's psychotherapists through their mistaken construction of the term "rule out."
- The courts erred in characterizing certain subpoenaed office treatment records and notes of psychiatrists as reports and disability evaluations. That led to the courts' inability to understand why those psychiatrists did not comment on Dr. Ketzner's ability to work as a physician. In fact, that question never was posed to them.
- The court erred in interpreting "physician" in the context of the John Hancock disability claims process. The court assumed that "physician" means medical doctor. In fact, "physician" as relates to the "physician statement" is "a licensed practitioner of healing arts practicing

within the scope of his/her license." The court questioned the validity of Marsha Ontell's submissions in support of Dr. Ketzner's disability claim even though Ms. Ontell, a board certified licensed psychiatric social worker, met the John Hancock definition of "physician."

- The District Court erred in finding that Dr. Ketzner had conflicting psychiatric diagnoses. In fact, Dr. Ketzner had multiple co-existing, non-conflicting diagnoses, which is common in patients with mental illness.
- The Third Circuit erred by misconstruing the criteria for diagnosing Major Depression. The court found it problematic that Dr. Ketzner "displayed no cognitive impairment" and that her "insight and judgment were adequate." Those findings are not criteria for a diagnosis of Major Depression and are not inconsistent with such a diagnosis.
- The Magistrate and the District Court Judge erred in holding that a RICO claim could not be added to Dr. Ketzner's complaint because a RICO claim would be a blatant attempt to avoid the strictures of ERISA. This case has nothing to do with ERISA.
- The lower courts erred in framing the question before them, which was not whether Dr. Ketzner was seriously mentally ill and disabled, but whether, given her serious mental illness, she was unable to perform the material duties of her occupation as a Doctor of Internal Medicine.
- The District Court erred in assuming that Ms. Ontell, one of the treating mental health professionals, "refused" to turn her treatment notes